

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0132, State of New Hampshire v. Thomas P. Hersey, the court on November 28, 2006, issued the following order:**

The defendant, Thomas P. Hersey, appeals an order of the trial court imposing his suspended sentence. We affirm.

Absent an unsustainable exercise of discretion, we will affirm a trial court's decision to impose a suspended sentence. See State v. Cooper, 146 N.H. 140, 141 (2001); State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard). In this case, the trial court found that the defendant's sentence was suspended for seven years conditioned upon his successful completion of the Summit House program. The court further found that he was accepted into and then dismissed from the program on two separate occasions in 2001 for behavioral problems. He never sought readmission to the program. When the Summit House program was terminated, the defendant did not apply for admission to the successor program offered by the department of corrections.

Citing State v. Timmons, 130 N.H. 831 (1988), and State v. LeCouffe, 152 N.H. 148 (2005), the defendant argues that his failure to satisfy the conditions for sentence suspension does not justify imposition of the sentence because he was given the full term of his first sentence to complete the program and the specific program referenced in the sentencing order was discontinued before the end of that term. This argument, however, ignores that he not only failed to complete the program due to his own bad conduct but also, unlike the defendant in LeCouffe, that he made no effort to complete the program or its successor before the end of his first sentence. In this case, the trial court neither imposed an impossible condition, see LeCouffe, 152 N.H. at 153-54, nor determined prematurely that the defendant had failed to complete it, see Timmons, 130 N.H. at 835-36. Accordingly, we affirm.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**